

IRA A. JACKSON  
COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
*Leverett Saltonstall Building*  
*100 Cambridge Street, Boston 02204*

March 27, 1985

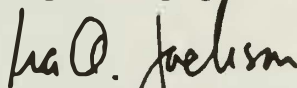
( "Company" )  
is a manufacturer of modular buildings in the province of Quebec, Canada. The Company has applied for registration with the Massachusetts Department of Revenue as a sales and use tax vendor because it anticipates selling its buildings to dealers in Massachusetts. The Company will deliver the modular buildings to the dealer, who will be responsible for securing the modules to a foundation and rendering them weathertight and habitable for sale to customers. Transportation charges to deliver the modules will be part of the amount charged to the dealer. You inquire as to the sales tax consequences of the sale of the modules to the dealers.

Massachusetts General Laws Chapter 64H, Section 2 imposes a five percent sales tax on all retail sales of tangible personal property unless otherwise exempted. Sales of tangible personal property for resale and sales of realty are not subject to the sales or use tax. The sales price upon which the tax is based is usually the total amount charged by the vendor. Section 1(14)(a) of Chapter 64H states that "In determining the 'sale price', no deduction shall be taken on account of (i) the cost of property sold; (ii) the cost of materials used, labor or service cost, interest charges, losses or other expenses; (iii) the cost of transportation of the property prior to its sale at retail." However, separately-stated transportation charges for transportation of property after its sale are excluded. G.L. c. 64H, § 1(14)(c)(v).

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Based on your description, the modular buildings are real property at the time of sale by the dealer to its customers, but tangible personal property when sold by the Company to the dealer. Therefore, the Company is responsible for collection of the sales tax on its sale of the modular buildings to dealers in Massachusetts. The sales price upon which the tax is based is the total price charged less separately-stated delivery charges for transportation after the sale. (See Letter Ruling 83-68, a copy of which is enclosed).

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. O. Joelism". The signature is written in a cursive style with a large, looping initial "H".

Commissioner of Revenue

IAJ:JA:mf

LR 85-42